

[Dr. P.S. Deshmukh]

the Schedule Castes also were considered a minority. Now the term is sought to be applied to even small castes and communities amongst the Hindus themselves. The Hindu community as a whole is exploited from day to day by some of these minor Hindu castes and if there is a strong feeling against these castes, it is not based on communal feelings at all. It is based on the dislike of the exploitation of the masses which that caste has been carrying on. It is this exploitation that a State may well want to put a stop to, and a provision like this should not be allowed to come in the way of any State acting in this direction.

Prof. K.T. Shah : In view of the arguments advanced, I would request the House to give me permission to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then we come to article 171.

Shri T.T. Krishnamachari : Since the provisions following the Chapter which begins with article 171 are more or less similar to the provisions which earlier the House has not yet decided relating to financial matters as well as the Supreme Court, we can now go back to those provisions and take up 109 again. Once we pass the financial provisions and the Supreme Court provisions, the provisions following the chapter which begins with article 171 will be easy to deal with as *mutatis mutandis* they are much the same.

Mr. Naziruddin Ahmad : We have not had notice that article 109 will be taken up today.

The Honourable Dr. B.R. Ambedkar : What does it matter?

Mr. President : Articles 171 and 172 relate only to procedure.

Shri T.T. Krishnamachari : Article 172 relates to joint sittings and unless the composition of the Upper House is decided, we will not be able to decide on the question of joint sittings. The articles following article 172 are much the same as those we have held over. But it is entirely left to the Chair to do what the Chair thinks fit.

Mr. President : There is notice, Mr. Naziruddin Ahmad, if you look at the Orders of the Day. Item No. 2 there refers to the remaining articles of Chapters II and IV of Part V and Part VI. So there is notice that article 109 may be taken up today. Shall we go back to article 109?

Honourable Members : Yes.

Mr. President : We shall take up article 109.

Article 109

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, I move:

“That in article 109, for the words ‘if in so far as’ the words ‘if and in so far as’ be substituted.”

(Amendments Nos. 1896 and 1897 were not moved.)

Shri T.T. Krishnamachari : Mr. President, Sir, I move amendment No. 1898 standing in my name, and in amendment thereof, I move amendment No. 147 of List III, Third Week, which reads as follows:

“That with reference to amendment No. 1898 of the List of Amendments for the proviso of article 109, the following be substituted :—

‘Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute.’ ”

Sir, amendment No. 1898 and the amendment that I have now moved are more or less the same except that the amendment that I have moved states the whole proviso as it would stand if proviso (i) is deleted. The reason why proviso (i) is to be deleted is, for one thing, it refers to disputes in which the State for the time being specified in Part III of the First Schedule is a party which opens out a vista of agreements and disputes which are to be prohibited from coming within the scope of this article by this particular proviso. The House will remember that right through our deliberations we have been trying to avoid a specific reference to States in Part III of the First Schedule. As I have stated before—and it has also been stated by Mr. K.M. Munshi and Dr. Ambedkar—where it is necessary to provide specifically for these States, if the need still exists at such time as we come to the end of the discussions of the articles in the Draft Constitution, it will be provided for in a separate chapter, and, therefore, this proviso No. (i) is entirely unnecessary, and it is only to avoid this particular provision, which will put these States on a different footing from other States which now form the provinces of India, that I have moved this amendment. Sir, it does not present any complications as it is merely an elimination of proviso (i). I hope the House will accept it.

(Amendment Nos. 1899, 1900 and 1901 were not moved.)

Shri Brajeshwar Prasad : (Bihar: General): Mr. President, Sir, I rise to oppose article 109. I am never tired of repeating the same argument because I feel that repetition may have some effect and may bring about a change in favour of a unitary system of Government. I am not in favour of vesting the power that has been vested under this article into the hands of the Supreme Court. The Government of India has always enjoyed the power of adjudicating in a dispute between two States. I fully understand the role of the Supreme Court in federalism, but I am opposed to both federalism and the Supreme Court. I feel that if there is a conflict between two States, the Government of India should adjudicate. If there is a conflict between the Government of India and a State, the decision of the Government of India should be final. The provincial Governments are subordinate Governments. I have nothing more to add.

Shri A. Thanu Pillai (Travancore State): Mr. President, Sir, I am very happy to accord my full support to the amendment moved by Mr. T.T. Krishnamachari. We find that in the Draft a distinction was sought to be made between States in Part III of the First Schedule and States in Part I, evidently on the ground of the difference in the political relations between the States in Part III and the Centre and between the States in Part I and the Centre. Sir, after this Draft was prepared, a good many changes have taken place. We find that in this Draft nineteen States are mentioned by name in Part III and the others were not mentioned because they were expected to be merged in large units. Now all the minor States have disappeared. Even of the nineteen units which were probably expected to remain, we now find only four or five and they are also fast coming into line with the other States, namely those that are known as the provinces. If there is any benefit that the people of the States in Part III should receive from the new Constitution that is to come into being, in my view it is a right of approach to the Supreme Court. In these States till now, we have had no right of appeal to the Privy Council. Our courts are supreme. The High Court of Travancore exercises the same extensive powers in respect of that State as the Privy Council in relation to the provinces of India. Now conditions are changing and they must change. Mr. T.T. Krishnamachari said that provisions will now be made on the basis that the Supreme Court will have the same Jurisdiction over the States in Part I and in Part III : but that if the necessary agreement of the States in Part III be not secured in time, they will be excluded from the operation of these provisions. I fully hope, Sir, that

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such a contingency will not arise. Everybody concerned in this matter including those that are responsible for running the Government of India and those that have a right to speak on behalf of the States in Part III will I hope appreciate that the people of these States should have the right to approach the Supreme Court in the same way as the people of the provinces. There should be absolutely no distinction in regard to this right. With that hope I fully support the amendment moved by Mr. T.T. Krishnamachari. I wish to refer to another point in this connection. Constitution-making in the States in Part III has now been held up by an order or direction from the Central Government. The Government of India are preparing a model Constitution for the States. I do not know at what stage that work is now. The question is has to be decided, and that promptly, whether the Constitution for the States should be framed here in this Constituent Assembly or in the States themselves by their respective Constituent Assemblies. In any case, delay should be avoided and this Constitution that we pass here will not be capable of being put into force fully until the Constitution of the States in Part III is also framed and passed. Therefore, no time should be lost and necessary steps should be immediately taken in that regard. I do not think this Constituent Assembly will be out of order in seeing to it that the Constitution-making in the States in Part III is taken up soon and completed because this Constitution will not be capable of being put into force until that Constitution is also passed. I hope that that matter would also receive the earnest consideration of this House and the Government of India.

(Amendment Nos. 1899 to 1901 were not moved.)

The Honourable Dr. B.R. Ambedkar : I do not think it is necessary to say anything. I accept Mr. T.T. Krishnamachari's amendment.

Mr. President : The question is:

“That for the proviso to article 109, the following be substituted :—

‘Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute.’ ”

The amendment was adopted.

Mr. President : The question is:

“That in article 109 for the words ‘if in so far as’ the words ‘if and in so far as’ be substituted.”

The amendment was adopted.

Mr. President : The question is:

“That article 109, as amended, stand part of the Constitution.”

The motion was adopted.

Article 109, as amended, was added to the Constitution.

Mr. President : We may go to article 110.

Pandit Thakur Das Bhargava : Sir, I have given notice of Amendments Nos. 182 and 183 to add a new article 109-A. I would request you, Sir, kindly to allow them to stand over.

Mr. President : They may stand over. But, if as a result of any other articles being accepted, these amendments become infructuous, then you take that risk.

Shri T.T. Krishnamachari : May I clarify the position, Sir? The position is that this article 109-A stands on its own. It is entirely unrelated to any article that comes thereafter. Therefore, the danger that the Chair visualises will not happen and it will not become infructuous by reason of later articles being passed; the subject covered is a new subject. If the Chair wishes, it may be allowed to stand over.

Mr. President : If it does not become infructuous, it will be taken up later. These two amendments will remain for the present.

Article 110

Mr. President : The motion is:

“That article 110 form part of the Constitution.”

Shri Raj Bahadur (United States of Matsya): Mr. President, Sir, I beg to move:

“That in clause (1) of article 110, for the words ‘a State’ the word ‘the territory of India’ be substituted.”

There are two principal reasons for which I wish to move this amendment. The term ‘a State’ is definitely one which restricts and limits the interpretation and meaning of this article. We can very easily contemplate the possibility of acquiring by conquest or otherwise new territories for India. So far as the definition of “the territories of India” is concerned, at present article 1 clause (3) says:

“The territory of India shall comprise—

- (a) the territories of the States;
- (b) the territories for the time being specified in Part IV of the First Schedule; and
- (c) such other territories as may be acquired.”

If we retain the term ‘a State’ in article 110, territories that may be acquired hereafter, or that may of their own free will come to be included in the territory of India will not fall within the purview of this article and as such, it is necessary, in my humble opinion, that this change should be made.

Again, if we turn to article 111, it would be found that the term used there is not ‘a State’, but ‘territory of India.’ Article 111, for instance, runs as follows:

“An appeal shall lie to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in the territory of India.....”

Again in article 112, the same words “territory of India” are used. It is therefore necessary that in article 110 also, the same term ‘territory of India’ should be used and not ‘a state’. For these reasons, I commend this amendment for the acceptance of the House.

(Amendment No. 1903 was not moved.)

Mr. Naziruddin Ahmad: Sir, with your permission, I shall move amendments 1904 and 1907 together, as they are related.

Sir, I beg to move:

“That in clause (1) of article 110, the words ‘as to the interpretation of this Constitution’ be omitted.”